HONOURABLE SRI G.S.SINGHVI

THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE

R.SUBHASH REDDY

-

WRIT APPEAL No. 2542 OF 2005

Between:

M/s. Surya Tronics Pvt. Ltd.

represented by its Chairman & Managing

Director, K.Satyanarayana.

… Appellant

And

The Regional Provident Fund Commissioner,

Barkatpura, Hyderabad, Andhra Pradesh.

… Respondent

::JUDGMENT::

Counsel for appellant : Sri Raghavan K.Tallapaka

Counsel for respondent : Smt. B.Kavitha Yadav.

29th December, 2005

Per G.S.Singhvi, C.J.

Undeterred by the dismissal of writ petition No.3854 of 2005 filed by it for issuance of a mandamus to the respondents to stay the sale proceedings initiated vide notice dated 3rd March, 2005 till the reconciliation of accounts between the Accounts and Enforcement Departments of Provident Fund organization, the petitioner filed writ petition No.5527 of 2005 with identical prayer, which was dismissed by the learned

Single Judge as barred by res judicata.

In the course of hearing, we repeatedly asked the learned counsel to show the order passed by this court in writ petition No.3854 of 2005, but he failed to produce the relevant order. Ultimately, counsel representing the Provident Fund organization produced a copy of order dated 1.3.2005 passed in W.P.No.3854 of 2005, the relevant portions of which are extracted below:

"This writ petition is filed aggrieved by the proclamation of sale dated 28.1.2005 issued by the respondent for sale of the property in question in pursuance of the certificate dated 30.4.2004 issued for recovery of a sum of Rs.14,44,192/- recoverable with interest in accordance with Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act').

As can be seen from the material on record, the order under Section 7A of the Act passed against the petitioner has become final and as on today, no appeal is pending challenging the said order. Hence, I do not find any reason to interfere with the sale proceedings initiated by the respondent."

Since identical prayer made by the appellant in the previous writ petition was negatived by the learned Single Judge on merits, the second writ petition filed by it was clearly barred by res judicata and the learned Single Judge did not commit any error by refusing to entertain the same. The view taken by the learned Single Judge is in consonance with the law laid down by the Supreme Court in **Sarguja Transport Service v. S.T.A. Tribunal, Gwalior** and **Upadhyay & Co. v. State of U.P..**

We are further of the view that the appellant should have been non-suited by the learned Single Judge only on the ground that it had not approached the court with clean hands. In our opinion, the appellant was duty bound to produce a copy of order dated 1.3.2005 passed in writ petition No.3854 of 2005 and then made an effort to convince the learned Single Judge that there was a valid ground for taking a view different than the one taken in the previous writ petition.

We would have saddled the appellant with the exemplary costs for its contumacious conduct, but refrain from doing so because the appeal is being dismissed at the admission stage.

With the above observation, the appeal is dismissed.

G.S.SINGHVI, C.J.

29.12.2005.

R.SUBHASH REDDY, J.

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